

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1098

SPONSOR: Military and Veterans' Affairs, Base Protection, and Spaceports and Senator Fasano

SUBJECT: The Rights of the Members of the United States Armed Forces

DATE: March 12, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Krasovsky</u>	<u>Krasovsky</u>	<u>MS</u>	<u>Favorable/CS</u>
2.	<u>                    </u>	<u>                    </u>	<u>CP</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>ATD</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

This committee substitute addresses several issues that have been identified by the Florida National Guard during their recent deployments which could be changed to better address those situations unique to today's military men and women. The committee substitute:

- Prohibits discriminations when renting to military personnel;
- Provides for the early termination of residential rental agreements under certain circumstances without penalty;
- Clarifies pay and leave of absence provisions for active military service;
- Provides for 100 percent refund of auto insurance when a member is relocated or called to active duty;
- Provides for the cancellation of a retail installment contract for leasing an automobile when a member is transferred outside the continental United States; and
- Extends the eligibility for, and use of, scholarship programs under the Florida Bright Futures program based on military service.

This committee substitute substantially amends the following sections of the Florida Statutes: 83.67; 83.682; 115.09; 115.14; 627.7283; and 1109.531.

This committee substitute creates section 250.35 and 520.14 of the Florida Statutes.

## II. Present Situation:

- The Florida National Guard -

The Florida National Guard (FNG) is the state's modern "organized" militia and is an essential reserve component of the national defense force. Its organization, arms, and training correspond to that of the federal military. The National Guard Bureau of the Department of Defense (DOD) determines the number of units and positions for the FNG, consistent with the force structure requirements of DOD's overall national military strategy.

The Florida Department of Military Affairs (DMA, or department) is the state agency responsible for management, oversight, and administrative support to the FNG. While the Governor is the Commander-in-Chief of the FNG, the Adjutant General is the agency head of DMA, as well as the Commanding General of the Florida Army and Air National Guard. The department is staffed with both state and federal employees.

There are currently more than 13,000 troops serving in more than 100 Air Force and Army units of the FNG. The FNG headquarters are located in St. Augustine, Florida. The FNG's primary training facility is Camp Blanding in Clay County. The FNG also maintains 60 armories throughout the state.

In response to recent national security threats, the FNG was activated to provide security for Florida's seaports, airports, and nuclear energy facilities. Members of the 44<sup>th</sup> Weapons of Mass Destruction-Civil Support Team mobilized to support local emergency operations at the anthrax-tainted American Media building in Boca Raton. FNG units were deployed to Afghanistan. In addition, the FNG joined with state law enforcement agencies on the Florida Anti-Terrorism Task Force and several different Regional Anti-Terrorism Task Forces. As of the first week in March 2003, approximately 5100 FNG troops have been deployed in preparation for action in the Middle East. When federally deployed, FNG troops become part of the United States Armed Forces.

- Protections for Military Personnel -

A combination of federal and state laws apply to FNG personnel when they are deployed on active duty. The federal Soldiers' and Sailors' Civil Relief Act protects the civil rights of active duty, uniformed service personnel from any demonstrated prejudice arising from judicial proceeding and transactions conducted by, or against, them in their absence. The federal Uniformed Service Employment and Reemployment Rights Act provides and preserves job security and seniority for service men and women returning to civilian life.

Under Florida law, officials and employees of the state, counties, municipalities, or political subdivisions of the state are to be granted a leave of absence from their respective offices and duties to perform active military service, (see s. 115.09 F. S.). Although the language of the statutes could be more precise, both officials and employees are entitled to full pay for the first 30 days, whereafter the employer may supplement the military pay to increase it to the level earned by the official or employee at the time he or she was called to active duty. By Cabinet resolution adopted September 25, 2001, Florida's Military Compensation Law was implemented to provide, in part, that state employees will receive, after the first 30 days of leave, the difference between their military salary and their government salary as of the time they were called to active duty.

Although Florida law does not specially prohibit discrimination by landlords in renting to military personnel, the law does recognize the unique circumstances of military service. Section 83.682, F.S., does provide that any member of the United States Armed Forces who is required to move pursuant to permanent change of station orders may terminate his or her rental agreement by providing the landlord with a written notice of termination. The notice of termination must be effective at least 30 days from the date of receipt by the landlord and must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer. Upon termination of the rental agreement, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable as otherwise provided for in the rental agreement.

This section also provides for the payment of liquidated damages to the landlord in certain circumstances. A tenant is liable for liquidated damages in instances where the tenant has completed less than 9 months of the tenancy and the landlord has suffered actual damages due to the loss of tenancy. The liquidated damages must be no greater than 1 month's rent if the tenant completed less than 6 months of the tenancy as of the effective date of termination, or one-half of 1 month's rent if the tenant has completed at least 6 but not less than 9 months of the tenancy as of the effective date of termination. Section 83.682, F.S., provides that if a tenant terminates the rental agreement 14 or more days prior to occupancy, no damages or penalties of any kind are due.

Chapter 250, F.S., also provides protection to members of the Florida National Guard while on state active duty. For example, s. 250.5201, F.S., provides that any civil proceeding involving a member of the Florida National Guard called out into state active service may be stayed by the court for a period not to exceed 30 days. Similarly, s. 250.2502, F.S., provides that proceedings to enforce actions for rent or possession involving members of the Florida National Guard on state active service may not proceed during the period of state active service provided the service person has provided written notice to the landlord, the monthly rental amount does not exceed \$1,200, and the rental unit is used as the primary dwelling for the service member and his or her dependents. As a practical matter, representatives of the Florida National Guard indicated that the relatively short duration of state activated service generally precludes the use of these statutory provisions.

Unlike the provisions of Chapter 83 F. S., relating to landlord and tenant issues, no special consideration is given to military personnel when they, because of a change in location due to military orders, no longer can use the automobile they are leasing or the motor vehicle insurance that is required for a Florida driver. (See the Motor Vehicle Retail Sales Finance Act as 520.01 – 520.10, 520.12, 520.125 and 520.13).

Section 627.7283, F.S., establishes requirements governing the cancellation of motor vehicle insurance and the return of unearned premiums. This section provides that if the insured individual cancels a policy, the insurer must mail the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation, whichever is later. If the insurer cancels a policy, the unearned portion of any premium must be mailed to the individual within 15 days after the effective date of the policy cancellation.

Subsection (4) provides that if the insured individual cancels the policy, the insurer may retain up to 10 percent of the unearned premium and must refund at least 90 percent of the unearned premium. If the insurer cancels the policy, it is required to refund 100 percent of the unearned premium. Cancellation is without prejudice to any claim originating prior to the effective date of the cancellation.

Section 627.733, F.S., provides that members of the United States Armed Forces who are on active duty outside of the United States in an emergency situation are not required to maintain Florida motor vehicle insurance. This exemption applies only for the length of time the armed forces member is on active duty outside of the United States.

Section 1009.531, F.S., establishes eligibility requirements for the award of Florida Bright Futures Scholarships. This section provides that a student is eligible to accept an initial award for a period of 3 years following high school graduation and to accept a renewal award for 7 years following high school graduation. A student who applies for an award by high school graduation and meets all other eligibility requirements, but does not accept his or her award, may reapply during subsequent application periods up to 3 years after high school graduation.

According to the Department of Education, the 3-year time limit associated with the initial award of a Bright Futures Scholarship creates a hardship for Florida students who are otherwise eligible to receive a Bright Futures Scholarship but elect to enlist in the United States Armed Forces directly out of high school. Similarly, students who receive a Bright Futures Scholarship but discontinue their education to enlist in the United States Armed Forces often find upon completion of their active duty military service that their eligibility has lapsed by virtue of the 7-year renewal limit.

### **III. Effect of Proposed Changes:**

The committee substitute addresses several issues in Chapter 83, relating to the landlord and tenant relationship under Florida law. First, the committee substitute specifically prohibits discrimination by landlords in renting to any member of the United States Armed Forces, the United States Reserve Forces, or the Florida National Guard, as well as in the terms of the rental agreement. The committee substitute specifically identifies those situations in which the above mentioned military personnel can prematurely terminate a residential rental agreement as follows:

- A permanent change of station more than 35 miles from the location of the rental premises;
- The member is prematurely or involuntarily discharged or released from active duty;
- The member is released from federal or state active duty after having leased the property while on such duty and the rental premises is more than 35 miles from the member's home of record prior to entering active duty;
- The member receives orders, or becomes eligible, to live in government quarters;
- The member receives temporary orders or state active duty orders for a period exceeding 60 days to an area more than 35 miles from the rental premises; or

- The member leased the property but prior to taking possession is ordered to an area more than 35 miles from the location of rental property.

This committee substitute amends s. 83.682, F.S., to eliminate existing provisions that require the payment of liquidated damages when a member of the United States Armed Forces terminates a rental agreement due to reassignment. The committee substitute would continue to require that service members provide notice of termination to the landlord at least 30 days in advance and provide either a copy of the official military orders or a written verification signed by the member's commanding officer. In addition, the service member would remain liable for the portion of the rent due under the rental agreement prorated to the effective date of the termination.

The committee substitute does not change, but rather clarifies, the provisions relating to officials and employees of the state, counties, municipalities, or political subdivisions of the state being granted a leave of absence to perform active military service. Military leaves shall be granted, and the officials and employees shall be entitled to receive full pay for the first 30 days of such leave.

Both federal and state laws apply to Florida National Guard members who have been federally deployed. Situations have been brought against guard members with no understanding that federal protections apply that would block or delay the action. The committee substitute provides notice in these situations by recognizing the applicability of federal law to a member stationed in Florida even though the protections provided by the law are not specially identified under state law. (See section 250.035 F. S.).

The committee substitute also allows a member to cancel a retail installment contract for leasing an automobile when the member is permanently transferred outside the continental United States or when such transfer is temporary, but for a period longer than 60 days. (See newly created section 520.14 F. S.).

This committee substitute also amends s. 627.7283, F.S., to provide that an insurer must refund 100 percent of the unearned premium if the insured is a member of the United States Armed Services who cancels because he or she has been called to active duty or transferred to a location where the insurance is not required. The committee substitute effectively increases the portion of the unearned premium that must be refunded from 90 percent to 100 percent for eligible military personnel. The committee substitute also clarifies the requirements s. 627.733, F.S., with regard to military personnel.

The committee substitute amends s. 1009.531, F.S., to provide a deferment for Bright Futures Scholarship recipients who elect to enlist in the United States Armed Forces. Specifically, the committee substitute provides that for those students who enlist directly out of high school, the 3-year eligibility period for their initial reward will commence upon the date of their separation from active duty. The committee substitute provides that for those students who are receiving Bright Futures Scholarships and discontinue their education to enlist in the United States Armed Forces, the remainder of their 7-year renewal period will commence upon the date of their separation from active duty.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This committee substitute would enable members of the United States Armed Services, the United States Reserves, and the Florida National Guard to recoup the entire amount of the unearned premium for a motor vehicle insurance policy when they are activated or transferred to a location where the insurance is not required. The committee substitute will require insurers to refund 100 percent of the unearned premium for eligible military personnel. The fiscal impact of the committee substitute on insurers is indeterminate.

This committee substitute would provide members of the United States Armed Forces a measure of relief from specified financial obligations when forced to prematurely terminate a residential rental agreement as a result of military orders. The committee substitute could have a potentially adverse fiscal impact on the owners/operators of rental properties located adjacent to military facilities. However, such properties would be able to recoup their losses by re-renting the dwelling units.

The committee substitute would provide members of the Armed Forces a measure of financial relief from auto leasing contracts when they are deployed outside the continental United States and would be unable to take the automobile with them. While the sales finance company would forfeit the revenue in such a situation, it would be able to lease the automobile to a new customer and mitigate its losses.

**C. Government Sector Impact:**

The Department of Education reports that this committee substitute will increase the number of students who are eligible for Bright Futures Scholarships. However, the fiscal impact of the committee substitute is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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